

STATE OF MICHIGAN  
COURT OF APPEALS

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JOYCE A. GARNEY,

Plaintiff-Appellant,

v

LADCO INTERNATIONAL, LTD.,

Defendant-Appellee.

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UNPUBLISHED

June 2, 1998

No. 194311

Oakland Circuit Court

LC No. 95-492846-CZ

Before: Young, Jr., P.J., and Kelly and Doctoroff, JJ.

PER CURIAM.

Plaintiff appeals as of right from the trial court's order granting summary disposition in favor of defendant pursuant to MCR 2.116(C)(10). We affirm.

Plaintiff filed this cause of action against defendant alleging age discrimination under the Elliott-Larsen Civil Rights Act, MCL 37.2101 *et seq.*; MSA 3.548(101) *et seq.* Specifically, plaintiff claims that defendant terminated her employment on the basis of her age in violation of MCL 37.2202(1)(a); MSA 3.548(202)(1)(a). Plaintiff was sixty-one years old at the time of her termination and her replacement was thirty-three years old. The trial court ruled that plaintiff failed to establish that age was a motivating factor in defendant's decision to terminate her employment.

A claim under the civil rights act consists of three stages. *Meagher v Wayne State Univ*, 222 Mich App 700, 710-711; 565 NW2d 401 (1997). In the first stage, plaintiff has the burden of establishing a prima facie case in order to create a rebuttable presumption of discrimination. *Id.* at 711. Plaintiff must establish: (1) plaintiff was a member of a protected class; (2) plaintiff suffered an adverse employment action; (3) plaintiff was qualified for the position; and (4) plaintiff was replaced by a younger person. *Id.*

Once the plaintiff has established a prima facie case, the defendant then has the burden of articulating legitimate, nondiscriminatory reasons for its employment action. *Id.* If the defendant fails to articulate a legitimate, nondiscriminatory reason, discrimination is presumed. *Town v Michigan Bell*, 455 Mich 688, 695; 568 NW2d 64 (1997). Once defendant rebuts the presumption, the burden shifts back to the plaintiff to establish with a new level of specificity that defendant's explanation is merely

pretextual to discrimination. *Id.* at 696. While age does not have to be the only motivating factor, it must at least be a motivating factor in the decision to take adverse employment action. *Matras v Amoco Oil Co*, 424 Mich 675, 684-685; 385 NW2d 586 (1986). If plaintiff fails at the third stage, the challenged employment action must stand. *Town, supra* at 696-697.

On appeal, plaintiff argues that the trial court erred in concluding that no genuine issue of material fact existed as to whether defendant met its burden in establishing that it had legitimate, nondiscriminatory reasons for plaintiff's discharge. We disagree. Defendant presented evidence that its upper-management staff repeatedly claimed plaintiff was unwilling to cooperate in the growth of the company, she had a negative attitude and disparaged the company. We find that defendant presented a legitimate, nondiscriminatory reason for plaintiff's discharge.

Plaintiff next argues that the trial court erred in concluding that no genuine issue of material fact existed as to whether she had presented sufficient evidence that defendant's reasons for discharging plaintiff were merely pretext. Plaintiff offered evidence that defendant's proffered legitimate, nondiscriminatory explanation was false. However, rebutting the employer's legitimate, nondiscriminatory reason does not necessarily create a triable question of discrimination. *Town, supra* at 698. Plaintiff also argues that defendant's explanation for discharging her was unreasonable. Challenging the soundness and reasonableness of an employer's business judgment is not an acceptable method of establishing pretext. *Meagher, supra* at 712.

The only evidence plaintiff presented was that she was discharged and a thirty-three-year-old woman was hired to replace her. The age of plaintiff's replacement, alone, will not establish age discrimination. Allowing a cause of action anytime a worker can show replacement by a younger person ignores the reality of the workplace that an older person will more often than not be replaced by a younger person. *Town, supra* at 712 n 11. Reviewing the evidence in a light most favorable to the non-movant, we find that plaintiff has failed to present any evidence to establish that age was a motivating factor in defendant's discharging her.

Finally, plaintiff argues that a fundamental error occurred when defendant was allowed to make improper arguments regarding evidence she presented and, further, defendant was allowed to present evidence that was concealed during discovery. However, plaintiff failed to object to defense counsel's arguments and, therefore, has not preserved the issue for appellate review. Additionally, plaintiff has failed to cite any authority in support of her arguments. This Court will not search for authority to support a party's position. *Weiss v Hodge*, 223 Mich App 620, 637; 567 NW2d 468 (1997). We therefore decline to review the issue. However, we note that defense counsel was properly performing his function as an advocate on behalf of his client when making his arguments to the court. Furthermore, any error resulting from evidence not disclosed pursuant to a specific discovery request was harmless in that it was disclosed during deposition testimony.

Affirmed.

/s/ Robert P. Young, Jr.

/s/ Martin M. Doctoroff